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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

HCL PARTNERS LIMITED PARTNERSHIP, On Behalf of Itself and All Others Similarly Situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, DEAN M. LUVISA, AMIN I. KHALIFA and PRICEWATERHOUSECOOPERS, LLP, Defendants.	**ECF CASE** **No. 07-CV-2245-BTM-NLS** Date: March 28, 2008, 2008 Time: 11:00 A.M. Courtroom: 15 (5th Floor) Per Chambers No Oral Argument Unless Requested by the Court

DECLARATION OF ANDY SOHRN IN OPPOSITION TO THE MOTION OF WESTCHESTER CAPITAL MANAGEMENT AND GREEN & SMITH INVESTMENT MANAGEMENT FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL

I, Andy Sohrn, an attorney duly admitted to practice law before the courts of the State of California, declare, under the penalty of perjury, as follows:

1. I am associated with the law firm Glancy Binkow & Goldberg, LLP. I am fully familiar with all the facts and circumstances herein. I submit this declaration in opposition to the motion of Westchester Capital Management and Green & Smith Investment Management for appointment of lead plaintiff and approval of lead counsel.

2. Exhibit 1 is a true and correct copy of The Merger Fund's Registration Statement, filed with the SEC on February 20, 2007.

3. Exhibit 2 is a true and correct copy of The Merger Fund VL's Registration Statement, filed with the SEC on April 18, 2007

4. Exhibit 3 is a true and correct copy of Green & Smith Investment Management, LLC's Uniform Application for Investment Advisor Registration Form ADV dated March 10, 2006 (terminated January 22, 2007).

5. Exhibit 4 is a true and correct copy of the Amended and Restated Declaration of Trust of The Merger Fund filed with the SEC on or about August 22, 1989.

6. Exhibit 5 is a true and correct copy of The Investment Advisory Contract between The Merger Fund and Westchester Capital Management, Inc., dated January 31, 1989.

7. Exhibit 6 is a true and correct copy of The Agreement and Declaration of Trust of The Merger Fund VL dated November 22, 2002.

8. Exhibit 7 is a true and correct copy of the limited power of attorney granted to Frederick W. Green on April 16, 2003.

9. Exhibit 8 is a true and correct copy of *Smajlaj v. Brocade Commc'ns Systems, Inc.*, Civ. No. 05-2042, slip op. (N.D. Cal. Jan. 12, 2006).

10. Exhibit 9 is a true and correct copy of *Singer v. Nicor, Inc.*, Civ. No. 02-5168, slip op. (N.D. Ill. Oct. 16, 2002).

I hereby declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 14th day of March, 2008 at San Diego, California.

/s/ Andy Sohrn
Andy Sohrn